

Hindu Law



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General characteristics of Hindu legal system

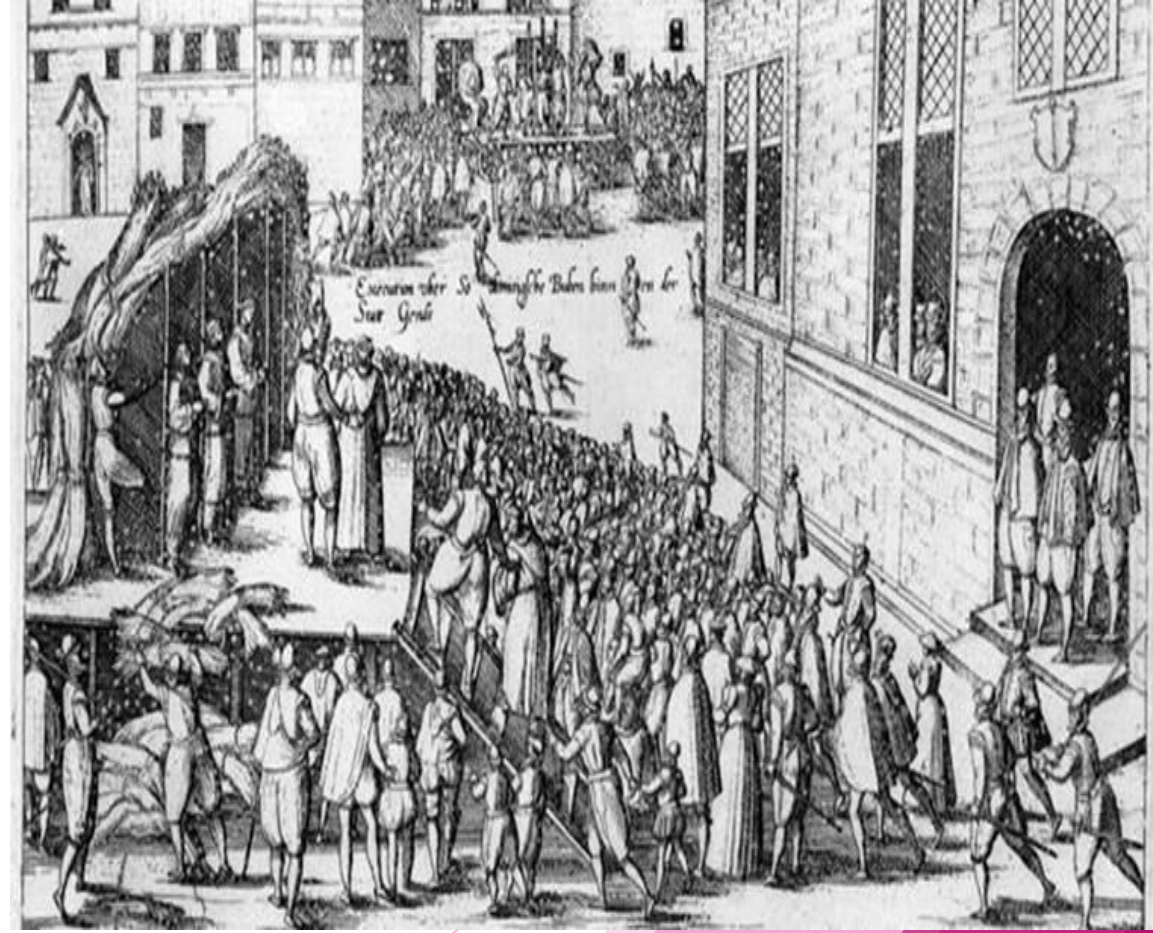
- Hindu tradition, in its surviving ancient texts, does not universally express the law in the canonical sense of *ius* or of *lex*.
- The ancient term in Indian texts is *Dharma*, which means more than a code of law, though collections of legal maxims were compiled into works such as the *Nārada-smṛiti*.
- The term "Hindu law" is a colonial construction, and emerged after the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials, that European common law system would not be implemented in India, that Hindus of India would be ruled under their "Hindu law" and Muslims of India would be ruled under "Muslim law" (*Sharia*).

History of its development

- Hindu law claims one of the longest continuous histories of any legal system in the world.
- For about 2,500 years it was based on the same primary sources, Sanskrit texts composed between ca. 500 BCE and 500 CE. These texts (dharmaśāstras) were considered to be revealed, and were part of the eternal, unchangeable Veda.
- From about the seventh until the eighteenth century the basic texts became the object of numerous commentaries, in which each author integrated the entire body of often contradictory dharmaśāstras into coherent systems.

History of its development

In 1772 the British decided to apply the law of the dharmaśāstras to Hindus in the newly established Anglo-Indian courts of law. Yet, ignorance of the Sanskrit language, lack of familiarity with Hindu culture, and the common law background of British judges led to fundamental developments. In 1955–6 the Indian Parliament overruled most of traditional Hindu law with four modern Acts—on marriage, succession, minority and guardianship, and adoptions and maintenance.



The structure of Hindu law

- In Hinduism, law is discussed as a subset of dharma which signifies behaviors that are considered in accord with rta, the order that makes life and the universe possible,note and includes duties, rights, laws, conduct, virtues and “right way of living”.The concept of Dharma includes Hindu law.
- In ancient texts of Hinduism, the concept of dharma incorporates the principles of law, order, harmony, and truth. It is explained as the necessary law of life and equated to satya (Sanskrit: सत्यं, truth), in hymn 1.4.14 of Brhadaranyaka Upanishad, as follows:
- Nothing is higher than Dharma. The weak overcomes the stronger by Dharma, as over a king. Truly that Dharma is the Truth (Satya); Therefore, when a man speaks the Truth, they say, "He speaks the Dharma"; and if he speaks Dharma, they say, "He speaks the Truth!" For both are one.

The structure of Hindu law

- After the independence of India from the colonial rule of Britain in 1947, India adopted a new constitution in 1950.
- Most of the legal code from the colonial era continued as the law of the new nation, including the personal laws contained in Anglo-Hindu law for Hindus, Buddhists, Jains and Sikhs, the Anglo-Christian law for Christians, and the Anglo-Muslim law for Muslims.
- Article 44 of the 1950 Indian constitution mandates a uniform civil code, eliminating all religion-based civil laws including Hindu law, Christian law and Muslim law throughout the territory of India.
- While Hindu law has since been amended to be independent of ancient religious texts, Article 44 of the Indian constitution has remained largely ignored in matters of Muslim law by successive Indian governments since 1950.

The source of Hindu law

Broadly, there are following two types of sources of Hindu law:

Traditional/Ancient sources.

Modern sources.

Traditional/ ancient sources

Traditional sources refer to those ancient Hindu legal systems that governed the conduct of Hindus in that particular time. The traditional source of Hindu law is the guiding principle in the present system also along with some modifications. So according to the traditional source of Hindu law, there are 4 sources of Hindu law, which are as follows:

- Shruti (Vedas)
- Smrities
- Digest and commentaries
- Customs

The source of Hindu law

Modern sources of Hindu law refers to those sources which are comparatively new sources that emerged over time and evolved in the present form. Following are the main source of Hindu law:

- Equity justice and good conscience
- Precedent
- Legislation

Traditional/ ancient sources

- **Shruti** means something which has been heard. The word is derived from “Shru” which means to ‘hear’. In theory, it is considered as a supreme and paramount source of Hindu law and is believed the language of gods through the sages.
- The word **Smriti** has been derived from ‘smri’ which means ‘to remember’. Technically smrities mean those works which are created by the virtue of memory of sages. The basis of smrities is shruties. Smrities can be referred to as a step ahead of smrities.
- **Digests and commentaries** came after smrities during the 7th century to 1800 A.D. During earlier stages commentaries were based on smrities but in the later period, the works were like digests containing various smrities and explaining and reconciling various contradictions.
- **Custom** can be defined as those crystallized practices which are followed by a community or group of people for a considerable period, which now has become a governing norm in that particular society or community. It means those established practices are being followed for a considerable period.

Modern sources.

Equity justice and good conscience

Equity means being fair and implies fairness in dealing. Impartiality is the main attribute of modern judicial systems. True justice can be delivered through equity and good conscience. Where no rule is given, unreasonableness would prevail.

Precedents

The doctrine of stare decisis started in India from British rule. All cases are now recorded and new cases are decided based on existing case laws.

Legislation

The legislation is an act of parliament that plays an important role in the formation of Hindu law. The legislation is often regarded as a tool for social change. The legislation provides a base and authenticity to the laws. After the independence of India, there has been a steep increase in legislation regarding the codification of personal laws.

Conclusion

- The ancient term in Indian texts is Dharma, which means more than a code of law, though collections of legal maxims were compiled into works such as the Nāradaśmṛti.
- The term "Hindu law" is a colonial construction, and emerged after the colonial rule arrived in South Asia, and when in 1772 it was decided by British colonial officials, that European common law system would not be implemented in India, that Hindus of India would be ruled under their "Hindu law" and Muslims of India would be ruled under "Muslim law".
- The substance of Hindu law implemented by the British was derived from a Dharmaśāstra named Manusmṛiti, one of the many treatises (śāstra) on Dharma.
- The British, however, mistook the Dharmaśāstra as codes of law and failed to recognise that these Sanskrit texts were not used as statements of positive law until the British colonial officials chose to do so.

Thank you!

